

AMENDED IN SENATE APRIL 24, 2013

AMENDED IN SENATE APRIL 16, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 492

Introduced by Senator Hernandez

February 21, 2013

An act to ~~repeal and add Sections 3041 and 3041.2~~ *amend Sections 3041 and 3041.1* of the Business and Professions Code, relating to optometry.

LEGISLATIVE COUNSEL'S DIGEST

SB 492, as amended, Hernandez. Optometrist: practice: licensure.

The Optometry Practice Act creates the State Board of Optometry, which licenses optometrists and regulates their practice. Existing law defines the practice of optometry to include, among other things, the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system, as well as the provision of rehabilitative optometric services, and doing certain things, including, but not limited to, the examination of the human eyes, the determination of the powers or range of human vision, and the prescribing of contact and spectacle lenses. ~~Existing law provides that the State Board of Optometry is required, by regulation, to establish educational and examination requirements for licensure to ensure the competence of optometrists to practice. Existing law authorizes an optometrist certified to use therapeutic pharmaceutical agents to diagnose and treat specified conditions, use specified pharmaceutical agents, and order specified diagnostic tests.~~ Any violation of the act is a crime.

~~This bill would delete the definition of the practice of optometry and would instead provide that a licensed optometrist would be authorized to perform certain health-related services, including, but not limited to, examining, preventing, diagnosing, and treating any disease, condition, or disorder of the visual system, the human eye, and adjacent and related structures of the visual system, prescribing appropriate drugs, including narcotics, and administering immunizations and to diagnose other common primary care conditions that have ocular manifestations. The bill would also authorize an optometrist, who is operating under a protocol with a physician and surgeon or a health care facility, or participating in a specified system of care in which the patient is being otherwise treated, to initiate treatment and manage medications for those diagnosed conditions. The bill would require the board to require applicants for licensure to successfully complete specified examinations; and would authorize the board to require the passage of additional examinations with regard to competency to utilize diagnostic and therapeutic pharmaceutical agents, if not covered by the required examinations.~~

This bill would add the provision of habilitative optometric services to the definition of the practice of optometry. The bill would expand the practice parameters of optometrists who are certified to use therapeutic pharmaceutical agents by removing certain limitations on their practice and adding certain responsibilities, including, but not limited to, the ability to immunize and treat certain diseases, and deleting the specified drugs the optometrist would be authorized to use, and authorizing the optometrist to use all therapeutic pharmaceutical agents approved by the United States Food and Drug Administration, as provided. The bill would also delete limitations on what kinds of diagnostic tests an optometrist could order and instead would authorize an optometrist to order appropriate laboratory and diagnostic imaging tests.

Existing law requires optometrists in diagnosing or treating eye disease to be held to the same standard of care as physicians and surgeons and osteopathic physicians and surgeons.

This bill would expand this requirement to include other diseases, and would require an optometrist to consult with and, if necessary, refer to a physician and surgeon or other appropriate health care provider if a situation or condition was beyond the optometrist's education and training.

Because this bill would change the definition of a crime, it would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3041 of the Business and Professions

2 Code is amended to read:

3 3041. (a) The practice of optometry includes the prevention
4 and diagnosis of disorders and dysfunctions of the visual system,
5 and the treatment and management of certain disorders and
6 dysfunctions of the visual system, as well as the provision of
7 *habilitative or* rehabilitative optometric services, and is the doing
8 of any or all of the following:

9 (1) The examination of the human eye or eyes, or its or their
10 appendages, and the analysis of the human vision system, either
11 subjectively or objectively.

12 (2) The determination of the powers or range of human vision
13 and the accommodative and refractive states of the human eye or
14 eyes, including the scope of its or their functions and general
15 condition.

16 (3) The prescribing or directing the use of, or using, any optical
17 device in connection with ocular exercises, visual training, vision
18 training, or orthoptics.

19 (4) The prescribing of contact and spectacle lenses for, or the
20 fitting or adaptation of contact and spectacle lenses to, the human
21 eye, including lenses that may be classified as drugs or devices by
22 any law of the United States or of this state.

23 (5) The use of topical pharmaceutical agents for the purpose of
24 the examination of the human eye or eyes for any disease or
25 pathological condition.

26 (b) (1) An optometrist who is certified to use therapeutic
27 pharmaceutical agents, pursuant to Section 3041.3, may also
28 diagnose and treat the human eye or eyes, or any of its or their
29 appendages, for all of the following conditions:

- 1 (A) Through medical treatment, infections of the anterior
- 2 segment and adnexa, excluding the lacrimal gland, the lacrimal
- 3 drainage system, and the sclera in patients under 12 years of age.
- 4 *adnexa.*
- 5 (B) Ocular allergies of the anterior segment and adnexa.
- 6 (C) Ocular inflammation, nonsurgical in cause except when
- 7 comanaged with the treating physician and surgeon, limited to
- 8 inflammation resulting from traumatic iritis, peripheral corneal
- 9 inflammatory keratitis, episcleritis, and unilateral nonrecurrent
- 10 nongranulomatous idiopathic iritis in patients over 18 years of age.
- 11 Unilateral nongranulomatous idiopathic iritis recurring within one
- 12 year of the initial occurrence shall be referred to an
- 13 ophthalmologist. An optometrist shall consult with an
- 14 ophthalmologist or appropriate physician and surgeon if a patient
- 15 has a recurrent case of episcleritis within one year of the initial
- 16 occurrence. An optometrist shall consult with an ophthalmologist
- 17 or appropriate physician and surgeon if a patient has a recurrent
- 18 case of peripheral corneal inflammatory keratitis within one year
- 19 of the initial occurrence. *inflammation.*
- 20 (D) Traumatic or recurrent conjunctival or corneal abrasions
- 21 and erosions.
- 22 (E) Corneal surface disease and dry eyes.
- 23 (F) Ocular pain, nonsurgical in cause except when comanaged
- 24 with the treating physician and surgeon, associated with conditions
- 25 optometrists are authorized to treat. *pain.*
- 26 (G) Pursuant to subdivision (f); (e), glaucoma in patients over
- 27 18 years of age, as described in subdivision (j); (i).
- 28 (H) *Eyelid disorders.*
- 29 (2) For purposes of this section, “treat” means the use of
- 30 therapeutic pharmaceutical agents, as described in subdivision (c),
- 31 and the procedures described in subdivision (e) (d).
- 32 (c) In diagnosing and treating the conditions listed in subdivision
- 33 (b), an optometrist certified to use therapeutic pharmaceutical
- 34 agents pursuant to Section 3041.3 may use all of the following
- 35 therapeutic pharmaceutical agents: *therapeutic pharmaceutical*
- 36 *agents approved by the United States Food and Drug*
- 37 *Administration for use in treating eye conditions set forth in this*
- 38 *chapter, including narcotic substances other than those listed in*
- 39 *Schedule I.*

- 1 ~~(1) Pharmaceutical agents as described in paragraph (5) of~~
2 ~~subdivision (a), as well as topical miotics.~~
- 3 ~~(2) Topical lubricants.~~
- 4 ~~(3) Antiallergy agents. In using topical steroid medication for~~
5 ~~the treatment of ocular allergies, an optometrist shall consult with~~
6 ~~an ophthalmologist if the patient's condition worsens 21 days after~~
7 ~~diagnosis.~~
- 8 ~~(4) Topical and oral anti-inflammatories. In using steroid~~
9 ~~medication for:~~
 - 10 ~~(A) Unilateral nonrecurrent nongranulomatous idiopathic iritis~~
11 ~~or episcleritis, an optometrist shall consult with an ophthalmologist~~
12 ~~or appropriate physician and surgeon if the patient's condition~~
13 ~~worsens 72 hours after the diagnosis, or if the patient's condition~~
14 ~~has not resolved three weeks after diagnosis. If the patient is still~~
15 ~~receiving medication for these conditions six weeks after diagnosis,~~
16 ~~the optometrist shall refer the patient to an ophthalmologist or~~
17 ~~appropriate physician and surgeon.~~
 - 18 ~~(B) Peripheral corneal inflammatory keratitis, excluding~~
19 ~~Moorens and Terriens diseases, an optometrist shall consult with~~
20 ~~an ophthalmologist or appropriate physician and surgeon if the~~
21 ~~patient's condition worsens 72 hours after diagnosis.~~
 - 22 ~~(C) Traumatic iritis, an optometrist shall consult with an~~
23 ~~ophthalmologist or appropriate physician and surgeon if the~~
24 ~~patient's condition worsens 72 hours after diagnosis and shall refer~~
25 ~~the patient to an ophthalmologist or appropriate physician and~~
26 ~~surgeon if the patient's condition has not resolved one week after~~
27 ~~diagnosis.~~
- 28 ~~(5) Topical antibiotic agents.~~
- 29 ~~(6) Topical hyperosmotics.~~
- 30 ~~(7) Topical and oral antiglaucoma agents pursuant to the~~
31 ~~certification process defined in subdivision (f).~~
 - 32 ~~(A) The optometrist shall refer the patient to an ophthalmologist~~
33 ~~if requested by the patient or if angle closure glaucoma develops.~~
 - 34 ~~(B) If the glaucoma patient also has diabetes, the optometrist~~
35 ~~shall consult with the physician treating the patient's diabetes in~~
36 ~~developing the glaucoma treatment plan and shall inform the~~
37 ~~physician in writing of any changes in the patient's glaucoma~~
38 ~~medication.~~
- 39 ~~(8) Nonprescription medications used for the rational treatment~~
40 ~~of an ocular disorder.~~

1 ~~(9) Oral antihistamines.~~

2 ~~(10) Prescription oral nonsteroidal anti-inflammatory agents.~~

3 ~~(11) Oral antibiotics for medical treatment of ocular disease.~~

4 ~~(A) If the patient has been diagnosed with a central corneal ulcer~~
5 ~~and the central corneal ulcer has not improved 48 hours after~~
6 ~~diagnosis, the optometrist shall refer the patient to an~~
7 ~~ophthalmologist.~~

8 ~~(B) If the patient has been diagnosed with preseptal cellulitis~~
9 ~~or dacryocystitis and the condition has not improved 48 hours after~~
10 ~~diagnosis, the optometrist shall refer the patient to an~~
11 ~~ophthalmologist.~~

12 ~~(12) Topical and oral antiviral medication for the medical~~
13 ~~treatment of the following: herpes simplex viral keratitis, herpes~~
14 ~~simplex viral conjunctivitis, and periocular herpes simplex viral~~
15 ~~dermatitis; and varicella zoster viral keratitis, varicella zoster viral~~
16 ~~conjunctivitis, and periocular varicella zoster viral dermatitis.~~

17 ~~(A) If the patient has been diagnosed with herpes simplex~~
18 ~~keratitis or varicella zoster viral keratitis and the patient's condition~~
19 ~~has not improved seven days after diagnosis, the optometrist shall~~
20 ~~refer the patient to an ophthalmologist. If a patient's condition has~~
21 ~~not resolved three weeks after diagnosis, the optometrist shall refer~~
22 ~~the patient to an ophthalmologist.~~

23 ~~(B) If the patient has been diagnosed with herpes simplex viral~~
24 ~~conjunctivitis, herpes simplex viral dermatitis, varicella zoster~~
25 ~~viral conjunctivitis, or varicella zoster viral dermatitis, and if the~~
26 ~~patient's condition worsens seven days after diagnosis, the~~
27 ~~optometrist shall consult with an ophthalmologist. If the patient's~~
28 ~~condition has not resolved three weeks after diagnosis, the~~
29 ~~optometrist shall refer the patient to an ophthalmologist.~~

30 ~~(13) Oral analgesics that are not controlled substances.~~

31 ~~(14) Codeine with compounds and hydrocodone with~~
32 ~~compounds as listed in the California Uniform Controlled~~
33 ~~Substances Act (Division 10 (commencing with Section 11000)~~
34 ~~of the Health and Safety Code) and the United States Uniform~~
35 ~~Controlled Substances Act (21 U.S.C. Sec. 801 et seq.). The use~~
36 ~~of these agents shall be limited to three days, with a referral to an~~
37 ~~ophthalmologist if the pain persists.~~

38 ~~(d) In any case where this chapter requires that an optometrist~~
39 ~~consult with an ophthalmologist, the optometrist shall maintain a~~
40 ~~written record in the patient's file of the information provided to~~

1 the ophthalmologist, the ophthalmologist's response, and any other
2 relevant information. Upon the consulting ophthalmologist's
3 request and with the patient's consent, the optometrist shall furnish
4 a copy of the record to the ophthalmologist.

5 (e)

6 (d) An optometrist who is certified to use therapeutic
7 pharmaceutical agents pursuant to Section 3041.3 may also perform
8 all of the following:

9 (1) Corneal scraping with cultures.

10 (2) Debridement of corneal epithelia.

11 (3) Mechanical epilation.

12 (4) Venipuncture for testing patients suspected of having
13 diabetes.

14 (5) Suture removal, with prior consultation with the treating
15 physician and surgeon.

16 (6) Treatment or removal of sebaceous cysts by expression.

17 (7) Administration of oral fluorescein to patients suspected as
18 having diabetic retinopathy.

19 (8) Use of an auto-injector to counter anaphylaxis.

20 (9) Ordering of smears, cultures, sensitivities, complete blood
21 count, mycobacterial culture, acid fast stain, urinalysis, tear fluid
22 analysis, and X-rays necessary for the diagnosis of conditions or
23 diseases of the eye or adnexa. An optometrist may order other
24 types of images subject to prior consultation with an
25 ophthalmologist or appropriate physician and surgeon *appropriate*
26 *laboratory and diagnostic imaging tests.*

27 (10) A clinical laboratory test or examination classified as
28 waived under CLIA and designated as waived in paragraph (9)
29 necessary for the diagnosis of conditions and diseases of the eye
30 or adnexa, or if otherwise specifically authorized by this chapter.

31 (11)

32 (10) Punctal occlusion by plugs, excluding laser, diathermy,
33 cryotherapy, or other means constituting surgery as defined in this
34 chapter.

35 (12)

36 (11) The prescription of therapeutic contact lenses, including
37 lenses or devices that incorporate a medication or therapy the
38 optometrist is certified to prescribe or provide.

39 (13)

1 (12) Removal of foreign bodies from the cornea, eyelid, and
 2 conjunctiva with any appropriate instrument other than a scalpel
 3 ~~or needle~~. Corneal foreign bodies shall be nonperforating, be no
 4 deeper than the midstroma, and require no surgical repair upon
 5 removal.

6 ~~(14)~~

7 (13) For patients over 12 years of age, lacrimal irrigation and
 8 dilation, excluding probing of the nasal lacrimal tract. The board
 9 shall certify any optometrist who graduated from an accredited
 10 school of optometry before May 1, 2000, to perform this procedure
 11 after submitting proof of satisfactory completion of 10 procedures
 12 under the supervision of an ophthalmologist as confirmed by the
 13 ophthalmologist. Any optometrist who graduated from an
 14 accredited school of optometry on or after May 1, 2000, shall be
 15 exempt from the certification requirement contained in this
 16 paragraph.

17 (14) *Immunizations for influenza and shingles and additional*
 18 *immunizations that may be necessary to protect public health*
 19 *during a declared disaster or public health emergency.*

20 (15) *In addition to diagnosing and treating conditions of the*
 21 *visual system pursuant to subdivision (a), diagnoses of diabetes*
 22 *mellitus, hypertension, and hyperlipidemia.*

23 ~~(f)~~

24 (e) The board shall grant a certificate to an optometrist certified
 25 pursuant to Section 3041.3 for the treatment of glaucoma, as
 26 described in subdivision ~~(j)~~ (i), in patients over 18 years of age
 27 after the optometrist meets the following applicable requirements:

28 (1) For licensees who graduated from an accredited school of
 29 optometry on or after May 1, 2008, submission of proof of
 30 graduation from that institution.

31 (2) For licensees who were certified to treat glaucoma under
 32 this section prior to January 1, 2009, submission of proof of
 33 completion of that certification program.

34 (3) For licensees who have substantially completed the
 35 certification requirements pursuant to this section in effect between
 36 January 1, 2001, and December 31, 2008, submission of proof of
 37 completion of those requirements on or before December 31, 2009.

38 “Substantially completed” means both of the following:

1 (A) Satisfactory completion of a didactic course of not less than
2 24 hours in the diagnosis, pharmacological, and other treatment
3 and management of glaucoma.

4 (B) Treatment of 50 glaucoma patients with a collaborating
5 ophthalmologist for a period of two years for each patient that will
6 conclude on or before December 31, 2009.

7 (4) For licensees who completed a didactic course of not less
8 than 24 hours in the diagnosis, pharmacological, and other
9 treatment and management of glaucoma, submission of proof of
10 satisfactory completion of the case management requirements for
11 certification established by the board pursuant to Section 3041.10.

12 (5) For licensees who graduated from an accredited school of
13 optometry on or before May 1, 2008, and not described in
14 paragraph (2), (3), or (4), submission of proof of satisfactory
15 completion of the requirements for certification established by the
16 board pursuant to Section 3041.10.

17 ~~(g)~~

18 (f) Other than for prescription ophthalmic devices described in
19 subdivision (b) of Section 2541, any dispensing of a therapeutic
20 pharmaceutical agent by an optometrist shall be without charge.

21 ~~(h)~~

22 (g) The practice of optometry does not include performing
23 surgery. "Surgery" means any procedure in which human tissue
24 is cut, altered, or otherwise infiltrated by mechanical or laser
25 means. "Surgery" does not include those procedures specified in
26 subdivision ~~(e)~~ (d). Nothing in this section shall limit an
27 optometrist's authority to utilize diagnostic laser and ultrasound
28 technology within his or her scope of practice.

29 ~~(i)~~

30 (h) An optometrist licensed under this chapter is subject to the
31 provisions of Section 2290.5 for purposes of practicing telehealth.

32 ~~(j)~~

33 (i) For purposes of this chapter, "glaucoma" means either of the
34 following:

- 35 (1) All primary open-angle glaucoma.
- 36 (2) Exfoliation and pigmentary glaucoma.

37 ~~(k)~~

38 (j) For purposes of this chapter, "adnexa" means ocular adnexa.
39 ~~(l)~~

1 (k) In an emergency, an optometrist shall stabilize, if possible,
2 and immediately refer any patient who has an acute attack of angle
3 closure to an ophthalmologist.

4 SEC. 2. Section 3041.1 of the Business and Professions Code
5 is amended to read:

6 3041.1. With respect to the practices set forth in ~~subdivisions~~
7 ~~(b), (d), and (e)~~ of Section 3041, optometrists diagnosing or treating
8 ~~eye disease or other diseases~~ shall be held to the same standard
9 of care to which physicians and surgeons and osteopathic
10 physicians and surgeons are held. *An optometrist shall consult*
11 *with and, if necessary, refer to a physician and surgeon or other*
12 *appropriate health care provider if a situation or condition occurs*
13 *that is beyond the optometrist’s education and training.*

14 SECTION 1. ~~Section 3041 of the Business and Professions~~
15 ~~Code is repealed.~~

16 SEC. 2. ~~Section 3041 is added to the Business and Professions~~
17 ~~Code, to read:~~

18 3041. ~~(a) An optometrist license authorizes the holder to do~~
19 ~~all of the following:~~

20 (1) ~~Examine, prevent, diagnose, and treat any disease, condition,~~
21 ~~or disorder of the visual system, the human eye, and adjacent and~~
22 ~~related structures of the visual system.~~

23 (2) ~~The use or prescription of appropriate drugs, including~~
24 ~~narcotic substances other than those listed in Schedule 1.~~

25 (3) ~~The performance of minor surgical and nonsurgical primary~~
26 ~~eye care procedures requiring no more than topical or local~~
27 ~~anesthetic, or both, consistent with an optometrist’s education and~~
28 ~~training.~~

29 (4) ~~The use or prescription of visual therapy, ocular exercises~~
30 ~~or vision habilitation, and rehabilitation services.~~

31 (5) ~~The performance or ordering of appropriate laboratory and~~
32 ~~diagnostic imaging tests.~~

33 (b) ~~An optometrist may administer immunizations.~~

34 (c) ~~In addition to diagnosing and treating conditions of the visual~~
35 ~~system pursuant to subdivision (a), an optometrist may diagnose~~
36 ~~other common primary care conditions that have ocular~~
37 ~~manifestations.~~

38 (d) ~~In addition to the authority provided in subdivisions (a) to~~
39 ~~(c), inclusive, an optometrist who is operating under a protocol~~
40 ~~with a physician and surgeon or a health care facility, or~~

1 participating in a medical home, accountable care organization,
2 or other system of care in which the patient is being otherwise
3 treated, may initiate treatment and manage medications for
4 conditions diagnosed pursuant to subdivision (c).

5 ~~SEC. 3. Section 3041.2 of the Business and Professions Code~~
6 ~~is repealed.~~

7 ~~SEC. 4. Section 3041.2 is added to the Business and Professions~~
8 ~~Code, to read:~~

9 ~~3041.2. (a) The State Board of Optometry shall establish, by~~
10 ~~regulation, educational and examination requirements for licensure~~
11 ~~to ensure the competence of optometrists to practice.~~

12 ~~(b) On and after January 1, 2014, the board shall require each~~
13 ~~applicant for licensure to successfully complete the Part I, Part II,~~
14 ~~and Part III examinations of the National Board of Examiners in~~
15 ~~Optometry.~~

16 ~~(c) On and after January 1, 2014, the board shall require each~~
17 ~~applicant for licensure to successfully complete an examination~~
18 ~~in California law and ethics developed and administered by the~~
19 ~~board.~~

20 ~~(d) On and after January 1, 2014, the board may require passage~~
21 ~~of additional examinations to ensure the competency of licentiates~~
22 ~~to utilize diagnostic and therapeutic pharmaceutical agents, if not~~
23 ~~otherwise covered by the examinations required pursuant to~~
24 ~~subdivisions (a) and (b).~~

25 ~~SEC. 5.~~

26 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
27 ~~Section 6 of Article XIII B of the California Constitution because~~
28 ~~the only costs that may be incurred by a local agency or school~~
29 ~~district will be incurred because this act creates a new crime or~~
30 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
31 ~~for a crime or infraction, within the meaning of Section 17556 of~~
32 ~~the Government Code, or changes the definition of a crime within~~
33 ~~the meaning of Section 6 of Article XIII B of the California~~
34 ~~Constitution.~~